

APR 10 1978

STATE GOVERNMENT

HOUSE FILE 2410

By HARVEY

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act amending the Iowa civil rights law.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter six hundred one A (601A), Code 1977,  
2 is amended by adding the following new section:

3 NEW SECTION. ONE HUNDRED TWENTY-DAY ADMINISTRATIVE RELEASE.

4 1. A person claiming to be aggrieved by any unfair or  
5 discriminatory practice, who initially elects to seek an  
6 administrative remedy by filing a complaint with the commission  
7 in accordance with section six hundred one A point fourteen  
8 (601A.14) of the Code, may subsequently commence an action  
9 for relief in the district court if all of the following  
10 conditions have been satisfied:

11 a. The complainant has timely filed the complaint with  
12 the commission as provided in subsection fifteen (15) of  
13 section six hundred one A point fourteen (601A.14) of the  
14 Code; and

15 b. The complaint has been on file with the commission  
16 for at least one hundred twenty days and the commission has  
17 issued a release to the complainant pursuant to subsection  
18 two (2) of this section.

19 2. Upon a request by the complainant, and after the  
20 expiration of one hundred twenty days from the timely filing  
21 of a complaint with the commission, the commission shall issue  
22 to the complainant a release stating that the complainant  
23 has a right to commence an action under section two (2) of  
24 this Act. A release under this subsection shall not be issued  
25 if a finding of no probable cause has been made on the com-  
26 plaint by the hearing officer charged with that duty under  
27 section twelve (12) of this Act, or a conciliation agreement  
28 has been executed under section six hundred one A point  
29 fourteen (601A.14) of the Code, or the commission has served  
30 notice of hearing upon the respondent pursuant to subsection  
31 six (6) of section six hundred one A point fourteen (601A.14)  
32 of the Code.

33 3. An action authorized under this section is barred un-  
34 less commenced within ninety days after issuance by the  
35 commission of a release under subsection two (2) of this

1 section. If a complainant obtains a release from the  
2 commission under subsection two (2) of this section, the  
3 commission shall be barred from further action on that  
4 complaint.

5 4. Venue for an action under this section shall be in  
6 Polk county, or the county in which the defendant resides  
7 or has its principal place of business, or in the county in  
8 which the alleged unfair or discriminatory practice occurred.

9 5. The district court may grant any relief in an action  
10 under this section which is authorized by subsection twelve  
11 (12) of section six hundred one A point fourteen (601A.14)  
12 of the Code to be issued by the commission.

13 Sec. 2. Section six hundred one A point two (601A.2),  
14 subsection seven (7), Code 1977, is amended to read as follows:

15 7. "Unfair practice" or "discriminatory practice" means  
16 those practices specified as unfair or discriminatory in sec-  
17 tions 601A.6, 601A.7, six hundred one A point eight (601A.8),  
18 six hundred one A point nine (601A.9) of the Code, and 601A.10.

19 Sec. 3. Section six hundred one A point two (601A.2),  
20 subsection ten (10), Code 1977, is amended by adding the  
21 following new paragraph:

22 NEW PARAGRAPH. "Public accommodation" includes each state  
23 and local government unit or tax-supported district of whatever  
24 kind, nature, or class that offers services, facilities,  
25 benefits, grants or goods to the public, gratuitously or  
26 otherwise. This paragraph shall not be construed by negative  
27 implication or otherwise to restrict any part or portion of  
28 the pre-existing definition of the term "public accommodation".

29 Sec. 4. Section six hundred one A point four (601A.4),  
30 Code 1977, is amended to read as follows:

31 601A.4 COMPENSATION AND EXPENSES--RULES. Commissioners  
32 shall be paid a sixty-dollar per diem and shall be reimbursed  
33 for actual and necessary expenses incurred while on official  
34 commission business. All per diem and expense moneys paid  
35 to commissioners shall be paid from funds appropriated to

1 the commission. The commission shall adopt, amend or rescind  
2 such rules as shall be necessary for the conduct of its  
3 meetings. A quorum shall consist of four commissioners.  
4 This provision relating to a quorum supercedes section  
5 seventeen A point two (17A.2) of the Code.

6 Sec. 5. Section six hundred one A point five (601A.5),  
7 subsections two (2) and three (3), Code 1977, are amended  
8 to read as follows:

9 2. To receive, investigate, and ~~pass-upon~~ finally determine  
10 the merits of complaints alleging unfair or discriminatory  
11 practices.

12 3. To investigate and study the existence, character,  
13 causes, and extent of discrimination in public accommodations,  
14 employment, apprenticeship programs, on-the-job training  
15 programs, vocational schools, credit practices, and housing  
16 in this state and to attempt the elimination of such  
17 discrimination by education and conciliation.

18 Sec. 6. Section six hundred one A point six (601A.6),  
19 subsection two (2), Code 1977, is amended by adding the  
20 following new paragraph:

21 NEW PARAGRAPH. e. Any person who is under the age of  
22 eighteen years of age, unless such person is considered to  
23 be an adult by law, or subject to the provisions of chapter  
24 ninety-two (92) of the Code.

25 Sec. 7. Section six hundred one A point six (601A.6),  
26 Code 1977, is amended by adding the following new subsection:

27 NEW SUBSECTION. Class actions commenced pursuant to this  
28 section shall be prohibited.

29 Sec. 8. Section six hundred one A point eight (601A.8),  
30 Code 1977, is amended by adding the following new subsection:

31 NEW SUBSECTION.

32 4. To discriminate against the lessee or purchaser of  
33 any real property or housing accommodation or part, portion  
34 or interest of the real property or housing accommodation,  
35 or against any prospective lessee or purchaser of the property

1 or accommodation, because of the race, color, creed, religion,  
2 sex, disability, age or national origin of persons who may  
3 from time to time be present in or on the lessee's or owner's  
4 premises for lawful purposes at the invitation of the lessee  
5 or owner as friends, guests, visitors, relatives or in any  
6 similar capacity.

7 Sec. 9. Section six hundred one A point nine (601A.9),  
8 Code 1977, is amended to read as follows:

9 601A.9 UNFAIR CREDIT PRACTICES. It shall be an unfair  
10 or discriminatory practice for any:

11 1. ~~A-creditor-shall-not~~ Creditor to refuse to enter into  
12 a consumer credit transaction or impose finance charges or  
13 other terms or conditions more onerous than those regularly  
14 extended by that creditor to consumers of similar economic  
15 backgrounds because of age, color, creed, national origin,  
16 race, religion, marital status, sex, or physical disability.

17 2. ~~A-person~~ Person authorized or licensed to do business  
18 in this state pursuant to chapter 524, 533, 534, 536, or 536A  
19 ~~shall-not~~ to refuse to loan or extend credit or to impose  
20 terms or conditions more onerous than those regularly extended  
21 to persons of similar economic backgrounds because of age,  
22 color, creed, national origin, race, religion, marital status,  
23 sex or physical disability.

24 3. Creditor to refuse to offer credit life or health and  
25 accident insurance because of color, creed, national origin,  
26 race, religion, marital status, age, physical disability or  
27 sex. Refusal by a creditor to offer credit life or health  
28 and accident insurance based upon the age or physical  
29 disability of the consumer shall not ~~violate-the-provisions~~  
30 ~~of-this-section-provided~~ be an unfair or discriminatory  
31 practice if such denial is based solely upon bona fide  
32 underwriting considerations not prohibited by title XX.

33 The provisions of this section shall not be construed by  
34 negative implication or otherwise to narrow or restrict any  
35 other provisions of this chapter.

1 Sec. 10. Section six hundred one A point fourteen  
2 (601A.14), subsection one (1), Code 1977, is amended by  
3 striking unnumbered paragraph two (2).

4 Sec. 11. Section six hundred one A point fourteen  
5 (601A.14), subsection three (3), Code 1977, is amended by  
6 striking the subsection and inserting in lieu thereof the  
7 following:

8 3. a. After the filing of a verified complaint, a true  
9 copy shall be promptly served by certified mail on the person  
10 against whom the complaint is filed. An authorized member  
11 of the commission staff shall make a prompt investigation  
12 and shall determine whether or not probable cause exists  
13 regarding the allegations of the complaint.

14 b. The determination of probable cause or no probable  
15 cause by the investigating official shall be immediately  
16 reported to a hearing officer under the jurisdiction of the  
17 commission for final determination of probable cause or no  
18 probable cause. The hearing officer shall be appointed  
19 pursuant to section seventeen A point eleven (17A.11) of the  
20 Code.

21 c. If the hearing officer concurs with the investigating  
22 official that probable cause exists regarding the allegations  
23 of the complaint, the staff of the commission shall promptly  
24 endeavor to eliminate the discriminatory or unfair practice  
25 by conference, conciliation, and persuasion. If the hearing  
26 officer finds that no probable cause exists, the hearing  
27 officer shall issue a final order dismissing the complaint  
28 and shall promptly mail a copy to the complainant and to the  
29 respondent by certified mail. A finding of probable cause  
30 shall not be introduced into evidence in an action brought  
31 under section three (3) of this Act.

32 d. The commission staff must endeavor to eliminate the  
33 discriminatory or unfair practice by conference, conciliation,  
34 and persuasion for a period of thirty days, which period shall  
35 commence upon proper notice to the parties of a finding of

1 probable cause. The director may order the conciliation  
2 conference and persuasion procedure provided in this section  
3 to be omitted when the director determines the procedure is  
4 unworkable by reason of past patterns and practices of the  
5 respondent, or a statement by the respondent that the  
6 respondent is unwilling to continue with the conciliation.  
7 The director must have the approval of a commissioner before  
8 omitting the conciliation, conference and persuasion procedure.  
9 Upon the omission of conciliation, the director shall state  
10 in writing the reasons for omission.

11 Sec. 12. Section six hundred one A point fourteen  
12 (601A.14), Code 1977, is amended by striking subsection five  
13 (5).

14 Sec. 13. Section six hundred one A point fourteen  
15 (601A.14), subsection six (6), Code 1977, is amended to read  
16 as follows:

17 6. When the ~~investigating-official~~ director is satisfied  
18 that further endeavor to settle a complaint by conference,  
19 conciliation, and persuasion ~~shall-be-futile~~ is unworkable  
20 and should be omitted, the ~~official-shall-report-the-same~~  
21 ~~to-the-commissioner---if-the-commission-determines-that-the~~  
22 ~~circumstances-warrant,-it~~ director with the approval of a  
23 commissioner, shall issue and cause to be served a written  
24 notice specifying the charges in the complaint as they may  
25 have been amended and the reasons for omitting conciliation,  
26 and requiring the respondent to answer the charges of such  
27 the complaint at a hearing before the commission, a  
28 commissioner, or ~~such-other~~ a person designated by the  
29 commission to conduct the hearing, hereafter referred to as  
30 the hearing examiner, and at a time and place to be specified  
31 in ~~such~~ the notice.

32 Sec. 14. Section six hundred one A point fourteen  
33 (601A.14), Code 1977, is amended by striking subsections eight  
34 (8) through eleven (11) and inserting in lieu thereof the  
35 following:

1 8. The hearing shall be conducted in accordance with the  
2 provisions of chapter seventeen A (17A) of the Code for  
3 contested cases. The burden of proof in such a hearing shall  
4 be on the commission.

5 Sec. 15. Section six hundred one A point fourteen  
6 (601A.14), subsection twelve (12), Code 1977, is amended by  
7 striking the subsection and inserting in lieu thereof the  
8 following:

9 12. If upon taking into consideration all of the evi-  
10 dence at a hearing, the commission determines that the  
11 respondent has engaged in a discriminatory or unfair practice,  
12 the commission shall state its findings of fact and conclusions  
13 of law and shall issue an order requiring the respondent to  
14 cease and desist from the discriminatory or unfair practice  
15 and to take the necessary remedial action as in the judgment  
16 of the commission will carry out the purposes of this chapter.  
17 A copy of the order shall be delivered to the respondent,  
18 the complainant, and to any other public officers and persons  
19 as the commission deems proper.

20 a. For the purposes of this subsection and pursuant to  
21 the provisions of this chapter "remedial action" includes  
22 but is not limited to the following:

23 (1) Hiring, reinstatement or upgrading of employees with  
24 or without pay.

25 (2) Admission or restoration of individuals to a labor  
26 organization, admission to or participation in a guidance  
27 program, apprenticeship training program, on-the-job training  
28 program or other occupational training or retraining program,  
29 with the utilization of objective criteria in the admission  
30 of individuals to such programs.

31 (3) Admission of individuals to a public accommodation  
32 or an educational institution.

33 (4) Sale, exchange, lease, rental, assignment or sublease  
34 of real property to an individual.

35 (5) Extension to all individuals of the full and equal

1 enjoyment of the advantages, facilities, privileges, and  
2 services of the respondent denied to the complainant because  
3 of the discriminatory or unfair practice.

4 (6) Reporting as to the manner of compliance.

5 (7) Posting notices in conspicuous places in the respon-  
6 dent's place of business in form prescribed by the commission  
7 and inclusion of notices in advertising material.

8 (8) Payment to the complainant of damages for an injury  
9 caused by the discriminatory or unfair practice which damages  
10 shall include actual cost and reasonable attorney fees.

11 Unless greater damages are proven, damages may be assessed  
12 at five hundred dollars for each violation.

13 b. In addition to the remedies provided in the preceding  
14 provisions of this subsection, the commission may issue an  
15 order requiring the respondent to cease and desist from the  
16 discriminatory or unfair practice and to take such affirmative  
17 action as in the judgment of the commission will carry out  
18 the purposes of this chapter as follows:

19 (1) In the case of a respondent operating by virtue of  
20 a license issued by the state or a political subdivision or  
21 agency, if the commission, upon notice to the respondent with  
22 an opportunity to be heard, determines that the respondent  
23 has engaged in a discriminatory or unfair practice and that  
24 the practice was authorized, requested, commanded, performed  
25 or knowingly or recklessly tolerated by the board of directors  
26 of the respondent or by an officer or executive agent acting  
27 within the scope of his or her employment, the commission  
28 shall so certify to the licensing agency. Unless the  
29 commission finding of a discriminatory or unfair practice  
30 is reversed in the course of judicial review, the finding  
31 of discrimination is binding on the licensing agency. If  
32 a certification is made pursuant to this subsection, the  
33 licensing agency may initiate licensee disciplinary procedures.

34 (2) In the case of a respondent who is found by the commis-  
35 sion to have engaged in a discriminatory or unfair practice

1 in the course of performing under a contract or subcontract  
2 with the state or political subdivision or agency, if the  
3 practice was authorized, requested, commanded, performed,  
4 or knowingly or recklessly tolerated by the board of directors  
5 of the respondent or by an officer or executive agent acting  
6 within the scope of his or her employment, the commission  
7 shall so certify to the contracting agency. Unless the  
8 commission's finding of a discriminatory or unfair practice  
9 is reversed in the course of judicial review, the finding  
10 of discrimination is binding on the contracting agency.

11 (3) Upon receiving a certification made under this  
12 subsection, a contracting agency may take appropriate action  
13 to terminate a contract or portion thereof previously entered  
14 into with the respondent, either absolutely or on condition  
15 that the respondent carry out a program of compliance with  
16 the provisions of this Act; and assist the state and all  
17 political subdivisions and agencies thereof to refrain from  
18 entering into further contracts.

19 c. The election of an affirmative order under paragraph  
20 b of this subsection shall not bar the election of affirmative  
21 remedies provided in paragraph a of this subsection.

22 Sec. 16. Section six hundred one A point fourteen  
23 (601A.14), Code 1977, is amended by adding the following new  
24 subsection:

25 NEW SUBSECTION. The terms of a conciliation agreement  
26 reached with the respondent may require him or her to refrain  
27 in the future from committing discriminatory or unfair  
28 practices of the type stated in the agreement, to take remedial  
29 action as in the judgment of the commission will carry out  
30 the purposes of this Act, and to consent to the entry in an  
31 appropriate district court of a consent decree embodying the  
32 terms of the conciliation agreement. Violation of such a  
33 consent decree shall be punished as contempt by the court  
34 in which it is filed, upon a showing by the commission of  
35 the violation at any time within six months of its occurrence.

1 In all cases where a conciliation agreement is entered into,  
2 the commission shall issue an order stating its terms and  
3 furnish a copy of the order to the complainant, the respondent,  
4 and such other persons as the commission deems proper. At  
5 any time in its discretion, the commission may investigate  
6 whether the terms of the agreement are being complied with  
7 by the respondent.

8 Upon a finding that the terms of the conciliation agreement  
9 are not being complied with by the respondent, the commission  
10 shall take appropriate action to assure compliance.

11 Sec. 17. Section six hundred one A point fourteen  
12 (601A.14), subsection thirteen (13), Code 1977, is amended  
13 to read as follows:

14 13. If, upon taking into consideration all of the evidence  
15 at a hearing, the commission ~~shall find~~ finds that a respondent  
16 has not engaged in any such discriminatory or unfair practice,  
17 the commission shall ~~state-its-findings-of-fact-and-shall~~  
18 ~~issue and-cause-to-be-served~~ an order denying relief and  
19 stating the findings of fact and conclusions of the commission,  
20 and shall cause a copy of the order to be served by certified  
21 mail on the complainant and the respondent ~~dismissing-the~~  
22 ~~complaint.~~

23 Sec. 18. Section six hundred one A point fourteen  
24 (601A.14), subsection fifteen (15), Code 1977, is amended  
25 to read as follows:

26 15. ~~Any-verified-complaint-filed-under-this-chapter-shall~~  
27 ~~be-so-filed~~ A claim under this chapter shall not be maintained  
28 unless a complaint is filed with the commission within one  
29 hundred ~~twenty~~ eighty days after the alleged discriminatory  
30 or unfair practice occurred.

31 Sec. 19. Section six hundred one A point fifteen (601A.15),  
32 subsection one (1), Code 1977, is amended by adding the  
33 following new paragraph:

34 NEW PARAGRAPH. For purposes of the time limit for filing  
35 a petition for judicial review under the Iowa administrative

1 procedure Act, specified by section seventeen A point nineteen  
2 (17A.19) of the Code, the issuance of a final decision of  
3 the commission under this chapter occurs on the date notice  
4 of the decision is mailed by certified mail to the parties.

5 Sec. 20. This Act shall take effect January 1, 1979.

6 EXPLANATION

7 This bill modifies the Iowa Civil Rights Act of 1965 in  
8 several significant ways:

9 Section 1 provides that a person who is aggrieved by any  
10 unfair or discriminatory practices, as defined by the Civil  
11 Rights Act, may seek an administrative remedy under section  
12 601A.14 of the Code and may subsequently commence a private  
13 action under this Act if the commission fails to act upon  
14 a properly and timely filed complaint within one hundred  
15 twenty days. The complainant may then request and the com-  
16 mission shall issue to the complainant, a release stating  
17 that the complainant has a right to commence an action in  
18 district court.

19 The district court may grant equitable relief, monetary  
20 damages, award costs and attorney fees to a prevailing  
21 plaintiff, and may issue any order which the commission is  
22 authorized to issue under section 601A.14, subsection 12.

23 The bill also amends the credit practice section of the  
24 Act by giving the commission expressed power to investigate  
25 credit practices.

26 The bill adds a new paragraph to the definition of "public  
27 accommodations" to clarify the existing definition so as to  
28 clearly cover all state and local government agencies  
29 dispensing goods, services, funds, or facilities to the public.

30 The bill amends subsection 2 of section 601A.6 of the Code  
31 to provide that for purposes of employment, persons who are  
32 under the age of eighteen and who are not otherwise considered  
33 adults by law, shall not be subject to section 601A.6 of the  
34 Code. The bill further amends subsection 2 of section 601A.6  
35 by providing that class actions commenced under the section

1 shall be prohibited.

2 The bill adds a new subsection to section 601A.8 of the  
3 Code, prohibiting discrimination against any person because  
4 of the race, color, creed, religion, sex, disability, age  
5 or national origin of friends or relatives who may from time  
6 to time be present in or on such persons premises for lawful  
7 purposes.

8 The bill empowers a hearing officer under the jurisdiction  
9 of the commission to determine probable cause, and authorizes  
10 the director to bypass the conciliation, persuasion, and  
11 conference processes when that process appears unnecessary,  
12 unworkable, or futile.

13 The bill authorizes the commission to investigate and  
14 review whether affirmative action, sanction and conciliation  
15 agreements reached with a respondent are being properly  
16 complied with.

17 The bill specifies that the thirty-day period for seeking  
18 judicial review commences on the day notice of the agency  
19 action is mailed to the parties.

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